

In the Court of Appeals of the State of Alaska

Kiven M. Collins,

Appellant,

v.

State of Alaska,

Appellee.

Court of Appeals No. **A-13092**

Order

Motion for Reconsideration

Date of Notice: **July 9, 2019**

Trial Court Case No. **3AN-14-05854CI, 3AN-86-05322CR**

The Appellant, Kiven Collins (now known as “Prince” Ahasuerus Zakaria Tenkamenin Lamin), is currently represented by Olena Kaltytiak Davis in this appeal. Ms. Davis is an attorney appointed to represent Mr. Collins at public expense, through a contract with the Office of Public Advocacy. This appeal arises from the dismissal of Mr. Collins’s application for post-conviction relief. The application was dismissed because it was untimely — it was filed approximately 18 years after the statute of limitations had expired. Ms. Davis has filed the opening brief in this case.

A different attorney, assistant public defender David Seid, represented Mr. Collins in the superior court post-conviction relief proceedings. In those proceedings, Mr. Collins argued, *inter alia*, that his late-filing should be excused because his former attorneys (both assistant public defenders) failed to alert him to new legislation imposing a statute of limitations on applications for post-conviction relief. This argument was rejected by the superior court and this appeal followed.

In May, Mr. Collins filed a pro se pleading that this Court interpreted as a request to dismiss Ms. Davis from her representation of Mr. Collins because Mr. Collins asserted that the Public Defender Agency has a conflict of interest in this case. This Court denied the request because Ms. Davis is not associated with the Pubic Defender

Collins v State - p. 2
File No. A-13092
July 9, 2019

Agency in this appeal — instead, as just mentioned, Ms. Davis is a contract attorney with the Office of Public Advocacy.

Mr. Collins has now asked the Court to reconsider its decision, explaining that the Court misunderstood his request for relief. Mr. Collins's position is that Mr. Seid — the assistant public defender who represented Mr. Collins during his post-conviction relief application — had a conflict of interest. Mr. Collins contends that based on the Alaska Supreme Court's recent decision in *Nelson v. State*, 440 P.3d 240 (Alaska 2019), Mr. Seid had a conflict of interest because Mr. Collins's trial and appellate attorneys were also assistant public defenders.

As an initial matter, the Court notes that the record suggests that none of Mr. Collins's prior attorneys were still employed by the Public Defender Agency when Mr. Seid litigated the timeliness of Mr. Collins's application. (See Judge Morse's 3/13/2017 Order.) The Court also notes that the record suggests that Mr. Collins's case at the Public Defender Agency had long-since been closed by the time the legislature enacted the new statute of limitations. It is therefore not clear what duty (if any) those attorneys or the Agency owed to Mr. Collins in terms of informing him of the new legislation after his case had been closed for many years.

In any case, the Court perceives no reason why, at this stage of the litigation, this case should be returned to the superior court so that these matters can be litigated. To the extent that Mr. Collins believes that Mr. Seid had a disqualifying conflict of interest, he may litigate that issue through a new application for post-conviction relief, based on *Grinols v. State*, 10 P.3d 600, 618 (Alaska App. 2000), affirmed in part, 74 P.3d 889 (Alaska 2003) (holding that a petitioner may litigate a second application if the first post-conviction relief attorney provided incompetent

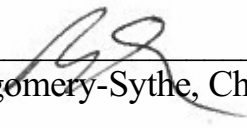
Collins v State - p. 3
File No. A-13092
July 9, 2019

representation in the first application). Likewise, if Mr. Collins believes that his current appellate attorney has been ineffective in failing to raise this conflict of interest issue on appeal, he may pursue such a claim through a *Grinols* post-conviction relief application. The fact that Mr. Collins disagrees with Ms. Davis's choice of appellate issues to brief does not create a conflict of interest, nor does it constitute a reason for removing her. *See Jones v. Barnes*, 463 U.S. 745 (1983); *Coffman v. State*, 172 P.3d 804, 812 (Alaska App. 2007).

Accordingly, Mr. Collins's motion to reconsider is **GRANTED**, but his request to have this case returned to the superior court on the ground that Mr. Seid had a disqualifying conflict of interest is **DENIED**.

Entered under the authority of Chief Judge Allard.

Clerk of the Appellate Courts



Ryan Montgomery-Sythe, Chief Deputy
Clerk

cc: Kiven M. Collins
Distribution:

Mail:
Terrell, Timothy W.

Email:
Davis, Olena Kalytiak, OPA - Contract